

DEPARTMENT OF SOCIAL SERVICES

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December 12, 1979

ALL-COUNTY LETTER NO. 79-79

TO: All County Welfare Directors

SUBJECT: ADOPTION OF NEW LEGISLATION

REFERENCE:

On September 7, 21 and 22, the Governor signed the three attached bills into law which your Social Service staff may need to be familiar with.

SB 13 (Richardson) - Chapter 944 Statutes of 1979

This bill expands criminal provisions regarding forcible sexual acts on children under the age of 14. Further, the bill modifies existing time elements concerning notification of release of registered sex offenders and revises how a minor is to be treated in cases involving forcible sexual acts.

AB 369 (McAlister) - Chapter 523 Statutes of 1979

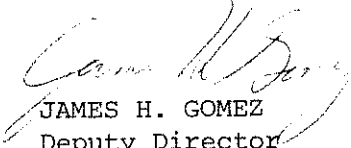
This bill amended the Civil Code so as to allow the emancipation of a minor only upon: 1) entering into a valid marriage; 2) entering active duty with any Armed Forces of the United States of America; and 3) or upon petition of Superior Court of the minor's residence. The bill further modifies the Civil Code dealing with such petitions.

AB 657 (Imbrecht) - Chapter 832 Statutes of 1979

This bill enabled a minor who has attained the age of 12, as well as designated maturity and intellectual levels, to consent to mental health treatment or counseling on an outpatient basis, without consent of a parent or guardian.

These bills will not require modifications of the Manual of Policy and Procedures Division 30. If you have any questions concerning these bills, please contact your County's Family and Children's Services Program Consultant.

Sincerely,


JAMES H. GOMEZ
Deputy Director

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cc: CWDA

GEN 654 (7/78)

Assembly Bill No. 369

CHAPTER 523

An act to amend Sections 62, 64, and 65 of, and to add Sections 69 and 70 to, the Civil Code, relating to emancipated minors, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 7, 1979. Filed with Secretary of State September 7, 1979.]

LEGISLATIVE COUNSEL'S DIGEST

AB 369, McAlister. Emancipated minors.

An existing statute provides that certain persons under the age of majority are deemed to be emancipated minors. Included among such persons is a minor who willingly lives separate and apart from his or her parents or legal guardian, with the consent or acquiescence of the parents or guardian, and who is managing his or her own financial affairs regardless of the source of such income, with a specified exception. The statute also sets out a procedure for an emancipated minor to obtain a judicial declaration of his or her status. A minor must have attained the age of 16 in order to obtain a judicial declaration of status on the aforementioned ground.

This bill would provide that a minor of the type described above must have received a judicial declaration of emancipation in order to be deemed emancipated and would authorize the issuance of such a declaration with respect to a minor who has attained the age of 14. It would also make a procedural change with regard to petitioning the court for a declaration of emancipation and would request the Judicial Council to prepare and distribute forms for such proceedings suitable for use by minors acting as their own counsel.

It would additionally provide that if such a declaration is obtained by fraud or by the withholding of material information it is voidable, as specified.

It would take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 62 of the Civil Code is amended to read:

62. Any person under the age of 18 years who comes within the following description is an emancipated minor:

(a) Who has entered into a valid marriage, whether or not such marriage was terminated by dissolution; or

(b) Who is on active duty with any of the armed forces of the United States of America; or

(c) Who has received a declaration of emancipation pursuant to Section 64.

SEC. 2. Section 64 of the Civil Code is amended to read:

64. (a) A minor may petition the superior court of the county in which he or she resides or is temporarily domiciled, for a declaration of emancipation. The petition shall be verified and shall set forth with specificity all of the following facts:

- (1) That he or she is at least 14 years of age.
- (2) That he or she willingly lives separate and apart from his or her parents or legal guardian with the consent or acquiescence of his or her parents or legal guardian.
- (3) That he or she is managing his or her own financial affairs.
- (4) That the source of his or her income is not derived from any activity declared to be a crime by the laws of the State of California or the laws of the United States.

(b) Before the petition is heard, such notice as the court deems reasonable must be given to the minor's parents, guardian, or other person entitled to the custody of the minor, or proof made to the court that their addresses are unknown, or that for other reasons such notice cannot be given. When a minor is a ward or dependent child of the court, notice shall be given to the probation department.

(c) The court shall sustain the petition if it finds that the minor is a person described by subdivision (a) and that emancipation would not be contrary to his or her best interests.

(d) If the petition is sustained, the court shall forthwith issue a declaration of emancipation, which shall be filed by the county clerk. Upon application of the emancipated minor, the Department of Motor Vehicles shall enter identifying information in its law enforcement computer network, and the fact of emancipation shall be stated on the department's identification cards issued to emancipated minors.

(e) If the petition is denied, the minor shall have a right to file a petition for a writ of mandate.

(f) If the petition is sustained, the parents or guardian shall have a right to file a petition for a writ of mandate if they have appeared in the proceeding and opposed the granting of the petition.

(g) A declaration shall be conclusive evidence that the minor is emancipated.

SEC. 3. Section 65 of the Civil Code is amended to read:

65. (a) A minor declared emancipated under Section 64 or his conservator may petition the superior court of the county in which he resides, to rescind the declaration issued under Section 64.

(b) Before the petition is heard, such notice as the court deems reasonable must be given to the minor's parents or guardian or proof made to the court that their addresses are unknown, or that for other reasons such notice cannot be given, however, no liability shall accrue to any parent or guardian not given actual notice, as a result of rescission of the declaration of emancipation, until such parent or guardian is given actual notice.

(c) The court shall sustain the petition and rescind the declaration of emancipation if it finds that the minor is indigent and has no

means of support.

(d) If the petition is sustained, the court shall forthwith issue a court order rescinding the declaration of emancipation granted under Section 64, which shall be filed by the county clerk. Notice shall be sent immediately to the Department of Motor Vehicles which shall remove the information relating to emancipation in its law enforcement computer network entered pursuant to subdivision (d) of Section 64. Any identification card issued stating emancipation shall be invalidated.

(e) Rescission of the declaration of emancipation shall not alter any contractual obligations or rights or any property rights or interests which arose during the period that the declaration was in effect.

SEC. 4. Section 69 is added to the Civil Code, to read:

69. A declaration of emancipation obtained by fraud or by the withholding of material information shall be voidable. The voiding of any such declaration pursuant to this section shall not alter any contractual obligations or rights or any property rights or interests which arose during the period that the declaration was in effect.

A proceeding under this section may be commenced by any person or by any public or private agency. Notice of the commencement of such a proceeding and of any order declaring the declaration of emancipation to be void shall be consistent with the requirements of subdivisions (b) and (d) of Section 65.

SEC. 5. Section 70 is added to the Civil Code, to read:

70. It is the intent of the Legislature that proceedings under Sections 64 and 65 shall be as simple and inexpensive as possible, and to that end, the Judicial Council is requested to prepare and distribute to the clerks of the superior courts appropriate forms for such proceedings which are suitable for use by minors acting as their own counsel.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order that the emancipation of minors under Section 64 of the Civil Code, resulting in the termination of parental support obligations, shall not take place inadvertently and without the knowledge of a minor and his or her parents, it is necessary that this statute go into immediate effect.

Assembly Bill No. 657

CHAPTER 832

An act to add Section 25.9 to the Civil Code, and to add Section 1014.5 to the Evidence Code, relating to minors.

[Became law without Governor's signature September 21, 1979. Filed with Secretary of State September 21, 1979.]

LEGISLATIVE COUNSEL'S DIGEST

AB 657, Imbrecht. Minors' consent to mental health treatment.

(1) Existing law permits a minor who has become emancipated (by marriage, service in the armed forces, or by virtue of being 15 years of age or older, living separate and apart from his or her parents or legal guardian, and managing his or her own financial affairs) to consent to mental health treatment. Parental consent or consent of a minor's legal guardian is required before such treatment is administered to minors not within these classes. Existing law also authorizes a minor to consent to counseling services with regard to a drug or alcohol related problem.

This bill would enable a minor who has attained the age of 12, as well as designated maturity and intellectual levels, to consent to mental health treatment or counseling on an outpatient basis, as defined, without the consent of a parent or guardian.

(2) Under existing law a patient has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication between the patient and his psychotherapist under designated circumstances.

This bill would provide that as to situations where a minor is authorized to consent to mental health treatment or counseling under the provision to be added to the law described above, the professional person rendering such mental health treatment or counseling has the psychotherapist-patient privilege.

The people of the State of California do enact as follows

SECTION 1. Section 25.9 is added to the Civil Code, to read:

25.9. (a) Notwithstanding any other provision of law, a minor who has attained the age of 12 years who, in the opinion of the attending professional person, is mature enough to participate intelligently in mental health treatment or counseling on an outpatient basis, and (1) would present a danger of serious physical or mental harm to himself or herself or to others without such mental health treatment or counseling, or (2) has been the alleged victim of incest or child abuse, may give consent to the furnishing of such outpatient services. Such consent shall not be subject to disaffirmance because of minority. The consent of the parent,

parents, or the legal guardian of the minor shall not be necessary to authorize the provision of such services. Mental health treatment or counseling of a minor as authorized by this section shall include the involvement of the minor's parent, parents, or legal guardian, unless in the opinion of the professional person who is treating or counseling the minor, such involvement would be inappropriate. Such person shall state in the client record whether and when he or she attempted to contact the parent, parents, or legal guardian of the minor, and whether such attempt to contact was successful or unsuccessful, or the reason why, in his or her opinion, it would be inappropriate to contact the parent, parents, or legal guardian of the minor.

(b) The parent, parents, or legal guardian of a minor shall not be liable for payment for any such mental health treatment or counseling services, as provided in subdivision (a), unless such parent, parents, or legal guardian participates in the mental health treatment or counseling and then only for the services rendered with such participation.

(c) As used in this section "mental health treatment or counseling services" means the provision of mental health treatment or counseling on an outpatient basis by any governmental agency, or a person or agency having a contract with a governmental agency to provide such services, by any agency which receives funding from community united funds, by runaway houses and crisis resolution centers, or by any private mental health professional, as defined in subdivision (d).

(d) As used in this section "professional person" means a person designated as a mental health professional in Sections 622 to 626 inclusive, of Article 8 of Subchapter 3 of Chapter 1 of Title 9 of the California Administrative Code, marriage, family, and child counselors as defined in Chapter 4 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code; licensed educational psychologists as defined in Article 5 (commencing with Section 17560) of Chapter 4 of Part 3 of Division 7 of the Business and Professions Code; credentialed school psychologists as defined in Section 49124 of the Education Code; clinical psychologists as defined in Section 1316.5 of the Health and Safety Code; and the chief administrators of any agency referred to in subdivision (c).

(e) The provisions of this section shall not be construed to authorize a minor to receive convulsive therapy or psychosurgery as defined in subdivisions (f) and (g) of Section 5325 of the Welfare and Institutions Code, or psychotropic drugs without the consent of he or her parent or guardian.

SEC. 2. Section 1014.5 is added to the Evidence Code, to read 1014.5. Notwithstanding any other provision of law, with respect to situations in which a minor has requested and been given mental health treatment or counseling pursuant to Section 25.9 of the Civil Code, the professional person rendering such mental health

treatment or counseling has the psychotherapist-patient privilege.

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Senate Bill No. 13

CHAPTER 944

An act to amend Sections 136, 137, 220, 264, 286, 288, 288a, 290, 653f, 1048, 1170.1, 1192.5, and 1203.06 of, to add Sections 667.6, 1203.065, 2691, 12022.3, and 12022.8 to, and to repeal Section 264.2 of, the Penal Code, and to amend Section 707 of, and to add Section 1732 to, the Welfare and Institutions Code, relating to crimes.

[Approved by Governor September 22, 1979. Filed with
Secretary of State September 22, 1979.]

LEGISLATIVE COUNSEL'S DIGEST

SB 13, Richardson. Crimes.

(1) Under existing law there are various criminal offenses which a person may commit, and sentence enhancements to which he may be subject, if he threatens or harms a victim or witness, apart from or incident to the commission of any other crime.

Specifically, the use of force or threat of force to prevent or dissuade the attendance of a witness is punishable alternatively by a specified fine, county jail or state prison term, while the use of force, threat of force, or fraud to influence testimony is a felony.

This bill would delete such fine and county jail alternatives and increase the length of such state prison or felony imprisonment.

This bill would also require that such penalties be announced in court at the arraignment upon motion of a party and showing of cause to believe a person may violate such provisions.

(2) Under existing law various sex crimes committed upon a child under 14, or upon any person by force, violence, or threat thereof, are punishable by fixed terms in a state prison or by a term in a county jail as specified.

This bill would make separate provisions relative to forcible sexual acts upon a child under 14, and as to these and other cases would make various provisions relative to infliction of bodily and psychological harm, aiding and abetting, solicitation, assault, consecutive terms, enhancement for prior or other convictions or use of deadly weapons, probation, and plea bargaining.

(3) Existing law provides for registration of sex offenders, consisting of specified information which is filed with a local law enforcement agency and forwarded to the Department of Justice, and notice of their release from confinement. Such notice is sent by the Department of Justice to the local law enforcement agency where the person expects to reside, after the address is sent to the department by the person in charge of the place of confinement.

This bill would provide for notice of such release to be sent by the Department of Justice to the court and prosecutor in the case as well as such local law enforcement agency, 50 days prior to such release.

as to felony offenders other than those released by a court on probation.

The bill would specify that certain offenders convicted of willful violation of the registration provisions shall serve at least 90 days in the county jail. The bill would require parole or probation revocation upon failure of a parolee or probationer to register.

Existing law does not provide for notice to a local law enforcement agency of a temporary assignment of an inmate away from an institution.

This bill would make such a requirement as to certain felony sex offenders.

Existing law does not include as such a sex offense certain anal or genital penetration by a foreign object.

This bill would include it.

(4) Existing law establishes the order in which criminal offenses shall be tried by the courts and provides that all criminal actions wherein a minor is detained as a material witness or a minor is the victim of the alleged offense shall be given precedence over all other criminal actions.

This bill would enlarge the group of criminal actions to be given precedence over all other criminal actions to include criminal actions wherein any person is a victim of an alleged sex crime committed by the use of force, violence, or the threat thereof.

Existing law also provides that the trial of all such criminal actions given precedence over others shall be commenced within 30 days after arraignment, unless for good cause the court directs the action to be continued, after a hearing and determination of the necessity of such continuance.

This bill would require the court to state the findings for good cause on the record.

The bill would specify that it creates no right to a trial within 30 days.

(5) Existing law authorizes temporary removal of state prisoners from the institution where they are detained for college classes, authorizes their placement in community correctional centers for educational and other furloughs, and provides for other classes in Department of Corrections institutions. Existing law also requires certain sex offenders to register with a city or county.

This bill would prohibit release or removal of imprisoned persons who are imprisoned for a felony subject to the registration requirement, and any person under the jurisdiction of the adult court confined by the Youth Authority, into a city or county for educational purposes, as specified.

(6) Under existing law a minor can be found not a proper subject to be dealt with under the juvenile court under specified circumstances involving commission of various offenses, including forcible rape.

This bill would include additional forcible sex offenses in such

provisions.

(7) Existing law authorizes commitment of adult offenders over 18 and under 21 years of age to the Youth Authority, as specified.

This bill would prohibit commitment to the Youth Authority of persons convicted of a felony involving prescribed sexual conduct committed when 18 years of age or older who have a previous felony conviction involving prescribed sexual conduct.

(8) This bill would also provide that no appropriation is made to local agencies for costs incurred by them pursuant to its provisions because of a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 136 of the Penal Code is amended to read:

136. (a) Every person who willfully and unlawfully prevents or dissuades any person who is or may become a witness, from attending upon any trial, proceeding, or inquiry, authorized by law, is guilty of a misdemeanor.

(b) Every person who willfully and unlawfully prevents or dissuades by means of force or threats of unlawful injury to person or damage to the property of another, any person who is or may become a witness, from attending upon any trial, proceeding, or inquiry, authorized by law, is punishable by imprisonment in the state prison for two, three, or four years.

(c) At the arraignment, on a showing of cause to believe this section may be violated, the court, on motion of a party, shall admonish the person who there is cause to believe may violate this section and shall announce the penalties and other provisions of this section.

SEC. 2. Section 137 of the Penal Code is amended to read:

137. (a) Every person who gives or offers, or promises to give, to any witness, or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced is guilty of a felony.

(b) Every person who attempts by force or threat of force or by the use of fraud to induce any person to give false testimony or withhold true testimony is guilty of a felony, punishable by imprisonment in the state prison for two, three, or four years.

As used in this subdivision, "threat of force" means a credible threat of unlawful injury to any person or damage to the property of another which is communicated to a person for the purpose of inducing him to give false testimony or withhold true testimony.

(c) Every person who knowingly induces another person to give false testimony or withhold true testimony not privileged by law is guilty of a misdemeanor.

(d) At the arraignment, on a showing of cause to believe this section may be violated, the court, on motion of a party, shall admonish the person who there is cause to believe may violate this

section and shall announce the penalties and other provisions of this section.

SEC. 3. Section 220 of the Penal Code is amended to read:

220. Every person who assaults another with intent to commit mayhem, rape, sodomy, oral copulation, or any violation of Section 264.1, 288 or 289 is punishable by imprisonment in the state prison for two, four, or six years.

SEC. 4. Section 264 of the Penal Code is amended to read:

264. Except as provided in Section 264.1, rape, as defined in Section 261, is punishable by imprisonment in the state prison for three, six, or eight years. Unlawful sexual intercourse, as defined in Section 261.5, is punishable by imprisonment in the county jail for not more than one year or in the state prison, and in such case the jury shall recommend by their verdict whether the punishment shall be by imprisonment in the county jail or in the state prison; provided, that when the defendant pleads guilty to an offense under Section 261.5 the punishment shall be in the discretion of the trial court, either by imprisonment in the county jail for not more than one year or in the state prison.

SEC. 5. Section 264.2 of the Penal Code is repealed.

SEC. 6. Section 286 of the Penal Code is amended to read:

286. (a) Sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person.

(b) (1) Except as provided in Section 288, any person who participates in an act of sodomy with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(2) Except as provided in Section 288, any person over the age of 21 years who participates in an act of sodomy with another person who is under 16 years of age shall be guilty of a felony.

(c) Any person who participates in an act of sodomy with another person who is under 14 years of age and more than 10 years younger than he, or who has compelled the participation of another person in an act of sodomy by force, violence, duress, menace, or threat of great bodily harm, shall be punished by imprisonment in the state prison for three, six or eight years.

(d) Any person who, while voluntarily acting in concert with another person, either personally or by aiding and abetting such other person, commits an act of sodomy by force or violence and against the will of the victim shall be punished by imprisonment in the state prison for five, seven or nine years.

(e) Any person who participates in an act of sodomy with any person of any age while confined in any state prison, as defined in Section 4504, or in any local detention facility as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(f) Any person who commits an act of sodomy, and the victim is at the time unconscious of the nature of the act and this is known to

the person committing the act, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

SEC. 6.5. Section 288 of the Penal Code is amended to read:

288. (a) Any person who shall willfully and lewdly commit any lewd or lascivious act including any of the acts constituting other crimes provided for in Part 1 of this code upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person or of such child, shall be guilty of a felony and shall be imprisoned in the state prison for a term of three, five, or seven years.

(b) Any person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or threat of great bodily harm, and against the will of the victim shall be guilty of a felony and shall be imprisoned in the state prison for a term of three, five or seven years.

SEC. 7. Section 288a of the Penal Code is amended to read:

288a. (a) Oral copulation is the act of copulating the mouth of one person with the sexual organ of another person.

(b) (1) Except as provided in Section 288, any person who participates in an act of oral copulation with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(2) Except as provided in Section 288, any person over the age of 21 years who participates in an act of oral copulation with another person who is under 16 years of age shall be guilty of a felony.

(c) Any person who participates in an act of oral copulation with another person who is under 14 years of age and more than 10 years younger than he, or who has compelled the participation of another person in an act of oral copulation by force, violence, duress, menace, or threat of great bodily harm, shall be punished by imprisonment in the state prison for three, six or eight years.

(d) Any person who, while voluntarily acting in concert with another person, either personally or by aiding and abetting such other person, commits an act of oral copulation by force or violence and against the will of the victim shall be punished by imprisonment in the state prison for five, seven, or nine years.

(e) Any person who participates in an act of oral copulation while confined in any state prison, as defined in Section 4504 or in any local detention facility as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(f) Any person who commits an act of oral copulation, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

SEC. 8. Section 290 of the Penal Code is amended to read:

290. (a) Any person who, since the first day of July, 1944, has been or is hereafter convicted in the State of California of the offense of assault with intent to commit rape, the infamous crime against nature, or sodomy under Section 220, or of any offense defined in Section 266, 267, 268, 285, 286, 288, 288a, 289, subdivision 1 of Section 647a, subdivision 2 or 3 of Section 261, subdivision (a) or (d) of Section 647, or subdivision 1 or 2 of Section 314, or of any offense involving lewd and lascivious conduct under Section 272; or any person who since such date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses; or any person who since such date or at any time hereafter is discharged or paroled from a penal institution where he was confined because of the commission or attempt to commit one of the above-mentioned offenses; or any person who since such date or at any time hereafter is determined to be a mentally disordered sex offender under the provisions of Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code; or any person who has been since such date or is hereafter convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses, shall within 30 days after the effective date of this section or within 30 days of his coming into any county or city, or city and county in which he resides or is temporarily domiciled for such length of time register with the chief of police of the city in which he resides or the sheriff of the county if he resides in an unincorporated area.

(b) Any person who, after the first day of August, 1950, is discharged or paroled from a jail, prison, school, road camp, or other institution where he was confined because of the commission or attempt to commit one of the above-mentioned offenses or is released from a state hospital to which he was committed as a mentally disordered sex offender under the provisions of Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code shall, prior to such discharge, parole, or release, be informed of his duty to register under this section by the official in charge of the place of confinement or hospital and the official shall require the person to read and sign such form as may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his discharge, parole, or release and shall report such address to the Department of Justice. The official in charge of the place of confinement or hospital shall give one copy of the form to the person, and shall send two or, if the conviction which makes the person subject to this section is a felony conviction, shall, not later than 45 days prior to the scheduled release of such person, send four

copies to the Department of Justice, which, in turn, shall forward one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon his discharge, parole, or release, and, if the conviction which makes the person subject to this section is a felony conviction, one copy to the prosecuting agency which prosecuted the person and one copy to the court where he was prosecuted. All such forms shall, if the conviction which makes the person subject to this section is a felony conviction, be transmitted within such times as to be received by the local law enforcement agency, prosecuting agency and court 30 days prior to the discharge, parole or release of the person.

(c) Any person who after the first day of August, 1950, is convicted in the State of California of the commission or attempt to commit any of the above-mentioned offenses and who is released on probation or discharged upon payment of a fine shall, prior to such release or discharge, be informed of his duty to register under this section by the court in which he has been convicted and the court shall require the person to read and sign such form as may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him. The court shall obtain the address where the person expects to reside upon his release or discharge and shall report within three days such address to the Department of Justice. The court shall give one copy of the form to the person, and shall send two copies to the Department of Justice, which, in turn, shall forward one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon his discharge, parole, or release.

(d) Such registration shall consist of (a) a statement in writing signed by such person, giving such information as may be required by the Department of Justice, and (b) the fingerprints and photograph of such person. Within three days thereafter the registering law enforcement agency shall forward such statement, fingerprints and photograph to the Department of Justice.

(e) If any person required to register hereunder changes his residence address he shall inform, in writing within 10 days, the law enforcement agency with whom he last registered of his new address. The law enforcement agency shall, within three days after receipt of such information, forward it to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence.

(f) Any person required to register under the provisions of this section who shall violate any of the provisions thereof is guilty of a misdemeanor. Any person who has been convicted of assault with intent to commit rape, oral copulation or sodomy, or of any violation of Section 286, 288, 288a, 289 or subdivision 2 or 3 of Section 261, and who is required to register under the provisions of this section who shall willfully violate any of the provisions thereof is guilty of a

misdemeanor and shall be sentenced to serve a term of not less than 90 days nor more than one year in the county jail. In no event does the court have the power to absolve a person who willfully violates this section from the obligation of spending at least 90 days of confinement in the county jail and of completing probation of at least one year.

(g) Whenever any person is released on parole or probation and is required to register under the provisions of this section but fails to do so within the time prescribed, the Community Release Board, the Youth Authority, or the court, as the case may be, shall order the parole or probation of such person revoked.

(h) The statements, photographs and fingerprints herein required shall not be open to inspection by the public or by any person other than a regularly employed peace or other law enforcement officer.

(i) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he is confined on any assignment within a city or county including fire fighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where such assignment shall occur shall be notified within a reasonable time prior to such removal from the institution. This provision shall not apply to any person temporarily released under guard from the institution where he is confined.

(j) As used in this section "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which upon the effective date of the amendment of this section enacted at the 1975-76 Regular Session of the Legislature is, or which prior to such date has been, contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

SEC. 9. Section 653f of the Penal Code is amended to read:

653f. (a) Every person who solicits another to offer or accept or join in the offer or acceptance of a bribe, or to commit or join in the commission of robbery, burglary, grand theft, receiving stolen property, extortion, perjury, subornation of perjury, forgery, kidnapping, arson or assault with a deadly weapon or instrument or by means of force likely to produce great bodily injury, is punishable by imprisonment in the county jail not more than one year or in the state prison, or by fine of not more than five thousand dollars (\$5,000), or the amount which could have been assessed for commission of the offense itself, whichever is greater, or by both such fine and imprisonment.

(b) Every person who solicits another to commit or join in the commission of murder is punishable by imprisonment in the state prison for two, four, or six years.

(c) Every person who solicits another to commit rape by force or violence, sodomy by force or violence, oral copulation by force or violence, or any violation of Section 264.1, 288 or 289, is punishable by imprisonment in a state prison for two, three or four years.

(d) An offense charged in violation of subdivision (a), (b) or (c) must be proved by the testimony of two witnesses, or of one witness and corroborating circumstances.

SEC. 10. Section 667.6 is added to the Penal Code, to read:

667.6. (a) Any person who is found guilty of violating subdivision (2) or (3) of Section 261, Section 264.1, subdivision (b) of Section 288, Section 289, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace or threat of great bodily harm who has been convicted previously of any such offense shall receive a five-year enhancement for each such prior conviction provided that no enhancement shall be imposed under this subdivision for any conviction occurring prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Any person convicted of an offense specified in subdivision (a) who has served two or more prior prison terms as defined in Section 667.5 for any offense specified in subdivision (a), shall receive a 10-year enhancement for each such prior term provided that no additional enhancement shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction.

(c) In lieu of the term provided in Section 1170.1, a full, separate, and consecutive term may be imposed for each violation of subdivision (2) or (3) of Section 261, Section 264.1, subdivision (b) of Section 288, Section 289, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace or threat of great bodily harm whether or not the crimes were committed during a single transaction. If such term is imposed consecutively pursuant to this subdivision, it shall be served consecutively to any other term of imprisonment, and shall commence from the time such person would otherwise have been released from imprisonment. Such term shall not be included in any determination pursuant to Section 1170.1. Any other term imposed subsequent to such term shall not be merged therein but shall commence at the time such person would otherwise have been released from prison.

(d) A full, separate, and consecutive term shall be served for each violation of subdivision (2) or (3) of Section 261, Section 264.1, subdivision (b) of Section 288, Section 289, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace or threat of great bodily harm if such crimes involve separate victims or involve the same victim on separate occasions.

Such term shall be served consecutively to any other term of imprisonment, and shall commence from the time such person would otherwise have been released from imprisonment. Such term shall not be included in any determination pursuant to Section 1170.1. Any other term imposed subsequent to such term shall not be merged therein but shall commence at the time such person would otherwise have been released from prison.

SEC. 11. Section 1048 of the Penal Code is amended to read:

1048. The issues on the calendar must be disposed of in the following order, unless for good cause the court shall direct an action to be tried out of its order:

1. Prosecutions for felony, when the defendant is in custody.
2. Prosecutions for misdemeanor, when the defendant is in custody.
3. Prosecutions for felony, when the defendant is on bail.
4. Prosecutions for misdemeanor, when the defendant is on bail.

However, all criminal actions wherein a minor is detained as a material witness, or wherein the minor is the victim of the alleged offense, or wherein any person is a victim of an alleged violation of Section 261, 264.1, 286, 288, 288a or 289, committed by the use of force, violence, or the threat thereof, shall be given precedence over all other criminal actions in the order of trial. In such actions continuations shall be granted by the court only after a hearing and determination of the necessity thereof, and in any event, the trial shall be commenced within thirty days after arraignment, unless for good cause the court shall direct the action to be continued, after a hearing and determination of the necessity of such continuance, and states the findings for such good cause on the record.

Nothing in this section shall be deemed to provide a statutory right to a trial within 30 days.

SEC. 12. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (b) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all such convictions shall be the sum of the principal term, the subordinate term and any additional term imposed pursuant to Section 667.5 or 667.6. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 12022, 12022.3, 12022.5, 12022.6, 12022.7 or 12022.8. The subordinate term for each consecutive offense shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements when the consecutive offense is not listed in subdivision (c) of Section 667.5, but shall include one-third of any

enhancement imposed pursuant to Section 12022, 12022.5 or 12022.7 when the consecutive offense is listed in subdivision (c) of Section 667.5. In no case shall the total of subordinate terms for consecutive offenses not listed in subdivision (c) of Section 667.5 exceed five years.

(b) In the case of any person convicted of one or more felonies committed while such person is confined in a state prison, or is subject to reimprisonment for escape from such custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all such convictions which such person is required to serve consecutively shall commence from the time such person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. The provisions of this subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(c) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667.5, 12022, 12022.5, 12022.6, and 12022.7, unless the additional punishment therefore is stricken pursuant to subdivision (g). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of such additional term, the court shall apply the sentencing rules of the Judicial Council.

(d) When two or more enhancements under Sections 12022, 12022.5, and 12022.7 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of robbery, rape or burglary, or attempted robbery, rape or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022 or 12022.5 and (2) an enhancement for great bodily injury as provided in Section 12022.7.

(e) The enhancements provided in Sections 667.5, 667.6, 12022, 12022.3, 12022.5, 12022.6, 12022.7, and 12022.8 shall be pleaded and proven as provided by law.

(f) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless the defendant stands convicted of a felony described in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) of this section, or an enhancement is imposed pursuant to Section 12022, 12022.5, 12022.6 or 12022.7.

(g) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in Sections 667.5, 12022, 12022.5, 12022.6, and 12022.7 if it determines

that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(h) For any violation of subdivision (2) or (3) of Section 261, Section 264.1, subdivision (b) of Section 288, Section 289, or sodomy or oral copulation by force, violence, duress, menace or threat of great bodily harm as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether such enhancements are pursuant to this or some other section of law. Each of such enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 13. Section 1192.5 of the Penal Code is amended to read:

1192.5. Upon a plea of guilty or nolo contendere to an accusatory pleading charging a felony, other than a violation of subdivision (2) or (3) of Section 261, Section 264.1, Section 286 by force, violence, duress, menace or threat of great bodily harm, subdivision (b) of Section 288, Section 288a by force, violence, duress, menace or threat of great bodily harm, or Section 289, the plea may specify the punishment to the same extent as it may be specified by the jury on a plea of not guilty or fixed by the court on a plea of guilty, nolo contendere, or not guilty, and may specify the exercise by the court thereafter of other powers legally available to it.

Where such plea is accepted by the prosecuting attorney in open court and is approved by the court, the defendant, except as otherwise provided in this section, cannot be sentenced on such plea to a punishment more severe than that specified in the plea and the court may not proceed as to such plea other than as specified in the plea.

If the court approves of the plea, it shall inform the defendant prior to the making of the plea that (1) its approval is not binding, (2) it may, at the time set for the hearing on the application for probation or pronouncement of judgment, withdraw its approval in the light of further consideration of the matter, and (3) in such case, the defendant shall be permitted to withdraw his plea if he desires to do so. The court shall also cause an inquiry to be made of the defendant to satisfy itself that the plea is freely and voluntarily made, and that there is a factual basis for such plea.

If such plea is not accepted by the prosecuting attorney and approved by the court, the plea shall be deemed withdrawn and the defendant may then enter such plea or pleas as would otherwise have been available.

If such plea is withdrawn or deemed withdrawn, it may not be received in evidence in any criminal, civil, or special action or proceeding of any nature, including proceedings before agencies, commissions, boards, and tribunals.

SEC. 14. Section 1203.06 of the Penal Code is amended to read:

1203.06. Notwithstanding the provisions of Section 1203:

(a) Probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any of the following persons:

(1) Any person who personally used a firearm during the commission or attempted commission of any of the following crimes:

- (i) Murder.
- (ii) Assault with intent to commit murder, in violation of Section 217.
- (iii) Robbery, in violation of Section 211.
- (iv) Kidnapping, in violation of Section 207.
- (v) Kidnapping for ransom, extortion, or robbery, in violation of Section 209.
- (vi) Burglary of the first degree, as defined in Section 460.
- (vii) Except as provided in Section 1203.065, rape by force or violence, in violation of subdivision (2) of Section 261.
- (viii) Except as provided in Section 1203.065, rape by threat of great and immediate bodily harm, in violation of subdivision (3) of Section 261.
- (ix) Assault with intent to commit rape, the infamous crime against nature, or robbery, in violation of Section 220.
- (x) Escape, in violation of Section 4530 or 4532.

(2) Any person previously convicted of a felony specified in subparagraphs (i) through (x) of paragraph (1), who is convicted of a subsequent felony and who was personally armed with a firearm at any time during its commission or attempted commission or was unlawfully armed with a firearm at the time of his arrest for the subsequent felony.

(b) (1) The existence of any fact which would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(2) This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(3) As used in subdivision (a) "used a firearm" means to display a firearm in a menacing manner, to intentionally fire it, or to intentionally strike or hit a human being with it.

(4) As used in subdivision (a) "armed with a firearm" means to knowingly carry a firearm as a means of offense or defense.

SEC. 15. Section 1203.065 is added to the Penal Code, to read:

1203.065. (a) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person convicted of violating subdivision (2) or (3) of Section 261, or Section 264.1, subdivision (b) of Section 288, or 289, or of committing sodomy or

oral copulation in violation of Section 286 or 288a by force, violence, duress, menace or threat of great bodily harm.

(b) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person convicted of a violation of Section 220 for assault with intent to commit rape, sodomy, oral copulation or any violation of Section 264.1, subdivision (b) of Section 288, or Section 289.

When probation is granted, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

(c) This section does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

SEC. 16. Section 2691 is added to the Penal Code, to read:

2691. No person imprisoned for a felony listed in Section 667.6 shall be removed or released under Section 2690 from the detention institution where he is confined for the purpose of attending college classes in any city or county nor shall such person be placed in a community correctional center pursuant to Chapter 9.5 (commencing with Section 6250) of Title 7 of Part 3 of the Penal Code. No person under the jurisdiction of the adult court and confined under the jurisdiction of the Department of the Youth Authority for conviction of a felony listed in Section 667.6 shall be removed or released from the place of confinement for attendance at any educational institution in any city or county.

SEC. 17. Section 12022.3 is added to the Penal Code, to read:

12022.3. For each violation of Section 261, 264.1, 286, 288, 288a or 289, and in addition to the sentence provided, any person shall receive an enhancement (a) of three years if such person uses a firearm or any other deadly weapon in the commission of such violation or (b) of two years if such person is armed with a firearm or any other deadly weapon.

SEC. 18. Section 12022.8 is added to the Penal Code, to read:

12022.8. Any person who inflicts great bodily injury, as defined in Section 12022.7, on any victim in a violation of subdivision (2) or (3) of Section 261, Section 264.1, subdivision (b) of Section 288, Section 289, or sodomy or oral copulation by force, violence, duress, menace or threat of great bodily harm as provided in Section 286 or 288a shall receive a five-year enhancement for each such violation in addition to the sentence provided for the felony conviction.

SEC. 19. Section 707 of the Welfare and Institutions Code is amended to read:

707. (a) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made

prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

- (1) The degree of criminal sophistication exhibited by the minor.
- (2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.
- (3) The minor's previous delinquent history.
- (4) Success of previous attempts by the juvenile court to rehabilitate the minor.
- (5) The circumstances and gravity of the offense alleged to have been committed by the minor.

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea which may already have been entered shall constitute evidence at such hearing.

(b) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he was 16 years of age or older, of one of the following offenses:

- (1) Murder;
- (2) Arson of an inhabited building;
- (3) Robbery while armed with a dangerous or deadly weapon;
- (4) Rape with force or violence or threat of great bodily harm;
- (5) Sodomy by force, violence, duress, menace or threat of great bodily harm;
- (6) Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code;
- (7) Oral copulation by force, violence, duress, menace or threat of great bodily harm;
- (8) Any offense specified in Section 289 of the Penal Code;
- (9) Kidnapping for ransom;
- (10) Kidnapping for purpose of robbery;
- (11) Kidnapping with bodily harm;
- (12) Assault with intent to murder or attempted murder;
- (13) Assault with a firearm or destructive device;
- (14) Assault by any means of force likely to produce great bodily injury;
- (15) Discharge of a firearm into an inhabited or occupied

building;

(16) Any offense described in Section 1203.09 of the Penal Code, upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit the juvenile court shall find that the minor is not a fit and proper subject to be dealt with under the juvenile court law unless it concludes that the minor would be amenable to the care, treatment and training program available through the facilities of the juvenile court based upon an evaluation of the following criteria:

- (i) The degree of criminal sophistication exhibited by the minor, and
- (ii) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction, and
- (iii) The minor's previous delinquent history, and
- (iv) Success of previous attempts by the juvenile court to rehabilitate the minor, and
- (v) The circumstances and gravity of the offenses alleged to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and reasons therefor shall be recited in the order. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at such hearing.

SEC. 20. Section 1732 is added to the Welfare and Institutions Code, to read:

1732. No person convicted of violating subdivision (2) or (3) of Section 261, Section 264.1, subdivision (b) of Section 288, Section 289, or of sodomy or oral copulation by force, violence, duress, menace or threat of great bodily harm as provided in Section 286 or 288a of the Penal Code committed when such person was 18 years of age who has previously been convicted of any such felony shall be committed to the Youth Authority. This section does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

SEC. 21. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to that section nor shall there be any appropriation made by this act because the Legislature recognizes that during any legislative session a variety of changes to laws relating to crimes and infractions may cause both increased and decreased costs to local government

entities which, in the aggregate, do not result in significant identifiable cost changes.

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